

REMARKS

The present amendment is submitted in response to the Office Action dated February 11, 2008, which set a three-month period for response, making this amendment due by May 11, 2008.

Claims 1-10 are pending in this application.

In the Office Action, claims 1-6, 9 and 10 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,250,286 to Hoenig et al. Claims 7-8 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hoenig et al.

In the present amendment, the specification has been amended to add standard headings and a cross reference to the related priority documents.

To more clearly define the present invention over the cited reference to Hoenig, claims 1 and 9 have been amended to add the features of claim 7, which was canceled.

Claims 1 and 9 now define that *"the current profile of the booster current is switched from the increased value or the longer duration to the standard value and the standard duration when the number of injections with the increased value of the booster current exceeds a maximum value"*.

The Examiner admits with regard to claim 7 that Hoenig does not disclose a method where the current profile of the booster current is switched from the increased value or the longer duration to the standard value and the higher duration when the number of injections with the increased value of the booster

current exceeds a maximum value. However, the Examiner maintains that it would be obvious to modify the Hoenig device in view of safety concerns and that decreasing the profile of the booster current after multiple longer duration injections is “inherent” in the nature of the operation, thus rendering claim 7 obvious.

The Applicant respectfully disagrees. MPEP Section 2144.05, cited by the Examiner, generally relates to cases in which concentration or temperature ranges were at issue to distinguish a claim over the cited art. That is, in the examples cited in the MPEP, Section 2144.05, the only distinguishing feature between the invention and the cited art was that the claimed method was performed at a different temperature and with a different concentration than those of the prior art.

In the present case, however, Hoenig is completely silent regarding switching the current profile of the booster current from the increased value to the standard value after a specific number of injections have been performed. In other words, Hoenig discloses ***NO RANGE*** of maximum injections or even suggests that a maximum value for the injections could be exceeded, thus causing the claimed switching. Therefore, the limitation of claim 7, now incorporated into claims 1 and 9, does not merely comprise an “optimization of ranges” disclosed by the prior art.

As MPEP 2144.05(B) states, “***a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable***

ranges of said variable might be characterized as routine experimentation".

Again, in the instant case, as the Examiner admits, Hoenig clearly does not recognize or acknowledge in the disclosure the particular parameter of a maximum number of injections that, if exceeded, will cause the switching of the current profile of the booster current. Therefore, the language of amended claim 1 regarding this limitation cannot be seen as "only routine experimentation" or an "optimization of ranges" of Hoenig.

The application in its amended state is believed to be in condition for allowance. Action to this end is courteously solicited. However, Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully submitted,



Michael J. Striker
Attorney for Applicant(s)
Reg. No. 27233
103 East Neck Road
Huntington, New York 11743
631-549-4700